

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**AMY GOLEY**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 3:15-cv-00277-DPJ-FKB**

**ELWOOD STAFFING SERVICES, INC.**

**MARK S. ELWOOD**

**MICHAEL STOCKARD, JR.**

**LIA ELLIOTT**

**DEFENDANTS**

**MOTION TO STRIKE PLAINTIFF'S RESPONSE IN OPPOSITION TO  
INDIVIDUAL DEFENDANTS' MOTION TO DISMISS**

COME NOW, the individually named Defendants, Mark Elwood, Michael Stockard, Jr. and Lia Elliott (incorrectly identified as Lisa Elliott in the Complaint) ("Individual Defendants"), by and through their counsel of record, and submit this Motion to Strike Plaintiff's untimely oppositional response to the pending Motion to Dismiss Claims Against Individual Defendants, and in support thereof, Individual Defendants would show unto the Court the following:

1. Plaintiff filed suit against Elwood Staffing Inc. and Individual Defendants (collectively "Defendants") on April 10, 2015. Defendants filed their Answers and Affirmative Defenses to the Complaint on May 28, 2015.

2. On August 31, 2015, Plaintiff moved the Court for leave to amend her Complaint, which the Court granted via text-only Order September 18, 2015. However, Plaintiff never filed her Amended Complaint.

3. On January 12, 2016, Individual Defendants filed their Motion to Dismiss Plaintiff's claims against them. Plaintiff failed to respond for almost four (4) months after the expiration of the time to do so.

4. On May 12, 2016, the Court entered its Order to Show Cause [28], requiring Plaintiff to respond no later than May 20, 2016 and show cause why her claims against the

Individual Defendants should not be dismissed. The Court specifically notified Plaintiff that failure to respond could result in the Court granting the Individual Defendants' motion and dismissing Plaintiff's claims against them. Despite this clear directive from the Court, Plaintiff did not submit her response until May 22, 2016, two (2) days *after* the deadline set by the Court.

5. As more fully articulated in Individual Defendants' memorandum submitted separately to the Court, Plaintiff's response should be stricken. Plaintiff did not seek additional time to file her response or leave to file her untimely response after the deadline expired. Plaintiff has failed to show the requisite excusable neglect necessary for the Court to consider her untimely response.

6. Additionally, the Court should deny Plaintiff's untimely and improper request for leave to amend her Complaint to assert new claims. Plaintiff's request fails to comport with any of the requirements of the Court's Local Rules, was made *almost nine (9) months* after the deadline set forth by the Court in the Case Management Order expired, and is unsupported by any explanation as to why the Court should grant Plaintiff leave to amend her Complaint a second time to add new claims more than one (1) year after litigation began.

WHEREFORE, THESE PREMISES CONSIDERED, Individual Defendants respectfully request that Plaintiff's response in opposition to the pending Motion to Dismiss be stricken and that the Court rule on Individual Defendants' motion based on the information provided by Individual Defendants in their principal motion and brief. Additionally, Individual Defendants respectfully request the Court deny Plaintiff's untimely and improper request for leave to amend her Complaint.

THIS, the 3rd day of June, 2016.

Respectfully submitted,

MARK S. ELWOOD, MICHAEL STOCKARD, JR. AND  
LIA ELLIOTT, Defendants

BY: /s/ Robin Banck Taylor  
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**ATTORNEYS FOR DEFENDANTS  
MARK ELWOOD, MICHAEL STOCKARD, JR.  
AND LIA ELLIOTT**

**CERTIFICATE OF SERVICE**

I, the undersigned counsel, certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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**ATTORNEY FOR PLAINTIFF**

This, the 3rd day of June, 2016.

/s/ Robin Banck Taylor  
Robin Banck Taylor